IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

W.P.(C).No.20337 of 2005(U)

AGAINST THE ORDER IN I.A.NO.106 OF 2005 IN L.A.R.No.20/1989
DATED 27.6.2005 OF PRINCIPAL SUB COURT, KOLLAM

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PETITIONER:-

SAVITHRI AMMA,
VELLASSERY PUTHEN VEEDU, KUNNATHOOR EAST P.O.,
KOLLAM-690 540.

BY ADV. SRI.B.SURESH KUMAR
SMT.M.A.THASNIM

RESPONDENTS:-

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1. THE STATE OF KERALA,
   REPRESENTED BY THE DISTRICT COLLECTOR,
   KOLLAM, KOLLAM-691 013.

2. THE REGIONAL DIRECTOR,
   EMPLOYEES STATE INSURANCE CORPORATION, THRISSUR.

R1 BY GOVERNMENT PLEADER SRI.C.M.SURESH BABU.
R2 BY STANDING COUNSEL SMT.T.D.RAJALAKSHMY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/03/2007, ALONG WITH W.P.(C). NO. 20338 OF 2005-U, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C).NO.20337 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF AMENDMENT APPLICATION DATED 11.1.2005 FILED BY THE PETITIONER BEFORE THE COURT BELOW.

EXT.P2 - TRUE COPY OB THE OBJECTION DATED 19.5.2005 FILED BY THE 1ST RESPONDENT.

EXT.P3 - TRUE COPY OF OBJECTION DATED 4.2.2005 FILED BY THE 2ND RESPONDENT.

EXT.P4 - TRUE COPY OF THE ORDER DATED 27.6.2005 IN I.A.NO.106 OF 2005 IN L.A.R.NO.20 OF 1989 PASSED BY THE SUBORDINATE JUDGE'S COURT, KOLLAM.

RESPONDENTS' EXHIBITS: NIL.

- TRUE COPY -

K.Padmanabhan Nair,J.

W.P.(C).Nos.20337 of 2005-U & 20338 of 2005-U

Dated, this the 5th day of March, 2007

JUDGMENT

These two writ petitions are filed under Article 227 of the Constitution of India challenging a common order passed by the Principal Sub Judge, Kollam dismissing two interlocutory applications filed by the petitioners, one in L.A.R.No.19 of 1989 and another in L.A.R.No.20 of 1989 for amending the claim statement.

2. Certain lands belonging to the petitioners were acquired for the purpose of construction of E.S.I. Dispensary and staff quarters for E.S.I. Corporation. The petitioners filed claim statement before the Land Acquisition Officer at the time of award enquiry under Section 9 of the Kerala Land Acquisition Act. Awards were passed. The petitioners received the compensation under protest and made a request to the Land Acquisition Officer for referring the matter to the Land Acquisition Court for enhancement of compensation. Accordingly, the cases were

referred to Land Acquisition Court. Before the Land Acquisition Court, both petitioners claimed land value at the rate of Rs.12,500/- per Are. The reference Court enhanced the land value at the rate of Rs.6,175/- per Are against the land value fixed by the Land Acquisition Officer at the rate of Rs.4464/- per Are. The petitioners did not file any appeal. In the meanwhile, the Requisitioning Authority, who is the 2nd respondent in these two writ petitions, filed Original Petition No.1941 of 2000 before this Court challenging the awards passed by the Land Acquisition Court in L.A.R.Nos.19 of 1989 and 20 of 1989 on the ground that the requisitioning authority was not made parties to those cases. This Court by judgment dated 17.12.2003 allowed the Original Petition, set aside the judgment in the Land Acquisition References and remanded the cases for fresh disposal.

3. After remand, the petitioner in W.P.(C).No.20337 of 2005 filed I.A.No.106 of 2005 in L.A.R.No.20 of 1989 and the petitioner in W.P.(C).No.20338 of 2005 filed I.A.No.105 of 2005 in L.A.R.No.19 of 1989 for amending the claim statement filed in those cases. The petitioners wanted to amend the claim statement incorporating several contentions. The main contention

sought to be raised was that the compensation claimed in the claim statement is highly inadequate. It was averred that the petitioners were not in station and as such they entrusted their brother to conduct the case, who filed the claim statement in which the land value was claimed at the rate of Rs.12,500/- per Are. It was contended that petitioners had never authorised their brother to raise a contention that the market value of the land was Rs.5,000/- per Are. According to them, at the relevant point of time, the market value was Rs.12,500/- per Cent. It was also averred that this fact came to their notice only when the matter was remanded by the High Court and when they perused the records. It is further averred that the averment in the claim statement that they demanded only Rs.5,000/- per Cent is not correct and they instructed their lawyer to amend the same, but he was of the opinion that the same cannot be done in view of the statutory prohibition. It was also averred that the reference letter sent by the Sub Collector, Kollam and in the records there were no statement to the effect that the petitioners only claim Rs.5,000/- per Cent at the time of award enquiry and even if such a statement was made by their brother, they are not bound

by the same. It is necessary to amend the claim statements filed in those cases by incorporating the land value. Though there is no averments in the affidavit, the amendments were not in respect of land value alone. Virtually the petitioners wanted to file a fresh claim statement in the place of old one. The learned Sub Judge heard both applications together and dismissed the same. One of the reasons stated by the learned Sub Judge is that after the amendment of the Code of Civil Procedure if an amendment application is filed after the commencement of trial, the parties will have to offer explanation as to why the amendment was not sought earlier. The learned Sub Judge also held that the reasons stated for amending the claim petitions are not true and correct and dismissed the applications. Challenging those orders, these writ petitions under Article 227 of the Constitution are filed.

4. The award was passed after the amendment to the Land Acquisition Act in the year 1985. It is true that after amendment, the provisions of the Kerala Land Acquisition Act is not be applicable to the proceedings and there is no statutory bar for the claimants to make any amount before the Court. But in

this case land acquisition proceedings were over long back. Admittedly the petitioners claimed only Rs.12,500/- per Are before the Land Acquisition Court. The Land Acquisition Court enhanced the compensation from Rs.4,464/- to Rs.6,175/- per Are. Admittedly neither the petitioners nor the Land Acquisition Officer filed appeal challenging the quantum of compensation. The Requisitioning Authority filed Original Petition alleging that they were not heard before ordering enhancement. The award was set aside and the Land Acquisition References were remanded.

5. The proceedings were initiated long prior to the amendment of the Code of Civil Procedure. So, the proviso to Order VI Rule 17 can have no application to the facts of this case. Section 16(2)(b) of the Code of Civil Procedure Amendment Act, 2002 makes it clear that the amendment of Order VI Rule 17 will not apply in respect of any pleading filed before the commencement of Section 16 of C.P.C. Amendment Act of 1999 and Section 7 of Act of 2002. So, one of the reasons stated by the learned Sub Judge for dismissing the applications is not correct.

6. Learned counsel appearing for the petitioners has argued that under Section 27 of the Kerala Land Acquisition Act, there is a bar to make any claim of an amount exceeding what was claimed before the Land Acquisition Officer at the award enquiry stage. But, that Act was repealed and at present there is no bar. Going by the pleadings, it is not possible to hold that the land acquisition proceedings were completed before the repealing of the Kerala Land Acquisition Act. At any rate, when the proceedings were initiated, the Central Act was in force. So, there was no prohibition for making a claim from the one which any claimant has made at the time of award enquiry. But for reasons best known to the petitioners, they did not make any claim. The references were answered by the trial Court on 28.8.1997. Original Petition was filed by the Requisitioning Authority in the year 2000, which was allowed on 7.12.2003. But, the amendment application was filed only in the year 2005. No reason whatsoever is stated by the petitioners for not making the claim before the disposal of the Land Acquisition References or even immediately after the order of remand. One of the reasons stated by the learned counsel for the petitioners is that the

petitioners entrusted their brother to file a statement and without their authority he had made a lesser claim. As rightly observed by the learned Sub Judge, even assuming that he did not make such a claim, nothing prevented the petitioners from making a claim at the time of trial. The learned Sub Judge also held that the petitioners also did not make a claim different from the one raised by their brother. That reasoning cannot be said to be perverse or illegal so as to invoke the jurisdiction of this Court under Article 227 of the Constitution of India. Even accepting the contention of the petitioners that the reasonings are faulty, this Court cannot invoke the extra ordinary jurisdiction conferred on it under Article 227 of the Constitution of India. The order passed by the Court is having jurisdiction over the matter. The petitioners are having alternate remedy also. If at all the case is disposed of and the petitioners are not satisfied with the quantum of compensation, it is open to them to file appeals and challenge the impugned orders also in those appeals. So, the orders cannot be interfered with invoking the powers under Article 227 of the Constitution of India.

In the result, the writ petitions are dismissed, but without prejudice to the right of the petitioners to challenge these orders also in the appeals that they may have to file against the awards in case they are not satisfied with the awards to be passed in the Land Acquisition References. I.A.No.1935 of 2007 in W.P.(C).No.20337 of 2005 and I.A.No.1936 of 2007 in W.P. (C).No.20338 of 2005 also shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-